

Message Text

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ORIGIN L-03

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E.O. 11652: N/A

TAGS: OECD, EINV

SUBJECT: OECD-IME: NATIONAL TREATMENT GUIDELINES

REFDOC: (A) SECRETARIAT PLAIN LANGUAGE (B) IME 75(9)

(C) US DRAFT OF NATIONAL TREATMENT GUIDELINES

1. "PLAIN LANGUAGE" DRAFT OF SECRETARIAT IS COMPLETELY UNACCEPTABLE. IT CONTAINS ONLY "HIGH-LIGHTS" OF SECRETARIAT'S FORMAL TEXT, IGNORING ALL OF ITS FINE POINTS AS WELL AS MOST OF THE CHANGES PROPOSED BY THE U.S. (FOR EXAMPLE, COMPARE THE BROAD EXCEPTIONS LANGUAGE IN PARA 3 OF REFDOC A TO PARAGRAPH 8(B) OF REFDOC B; OR COMPARE PARA 3 OF REFDOC A TO PARA 10 OF REFDOC C. THERE IS NOT EVEN A DEFINI-

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TION OF NATIONAL TREATMENT IN REFDOC A.)

2. WE VIEW PARA 8 AS KEY PARAGRAPH IN GUIDELINES. (DEALING WITH GENERAL EXCEPTIONS TO NATIONAL TREATMENT OTHER THAN THOSE MANDATED BY THE VERY LIMITED CONSIDERATION IN PARAGRAPH 8. AS US DEL NOTED IN LAST CIME MEETING, SUCH A PARAGRAPH GOES BEYOND EXCEPTIONS CALLED FOR IN OUR FCN TREATIES. AS NATIONAL TREATMENT GUIDELINES WILL BE MAJOR GOVERNMENT OBLIGATION OF THE TRI-PARTITE OECD PACKAGE, BROAD EXCEPTIONS PROVISION WOULD MAKE IT EXTREMELY DIFFICULT FOR USG TO ARGUE IN UN OR OAS CODE

EXERCISES THAT GOVERNMENT SHOULD TREAT TNES IN NON-DISCRIMINATORY FASHION. YOU MIGHT, THEREFORE, PROPOSE ELIMINATION OF PARA 8, ARGUING THAT "SERIOUS INJURY TO THE NATIONAL ECONOMY" IS SUPERFLUOUS TEST AS SUCH INJURY COULD BE CONSTRUED AS FALLING UNDER THE SECURITY INTERESTS TEST OF PARA 4 OF DRAFT, ALTHOUGH WE RECOGNIZE NEGOTIATING DIFFICULTIES OF THIS POSITION.

3. IT SHOULD BE NOTED THAT NONE OF PARAGRAPH 8 PROPOSALS DISTINGUISH BETWEEN DENIAL OF NATIONAL TREATMENT FOR ALREADY-ESTABLISHED ENTERPRISES AND THOSE TO BE ESTABLISHED, A DISTINCTION MADE IN OUR FCN TREATIES. PERHAPS IF THIS DISTINCTION WERE MADE, AN EXCEPTIONS PROCEDURE WOULD BE MORE ACCEPTABLE. VIEWS OF FRG ON THIS APPROACH SHOULD BE EXPLORED ON AN AD REFERENDUM BASIS.

4. IN SUM, IF IT IS FELT THAT SOME GENERAL EXCEPTIONS PROCEDURE IS NEEDED, WE PREFER THE PRESENT PARA 8 LANGUAGE IN REFDOC C AND FEEL THAT THERE IS NO REASON AT PRESENT FOR THE USG TO SOFTEN OUR STAND.

5. IN GENERAL, WHAT WE WANT IS FOR SECRETARIAT TO UNDERTAKE TO PRODUCE NEW DRAFT FOR CONSIDERATION OF CIME BASED ON U.S. DRAFT AND REF (B). INGERSOLL

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